IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO.550 OF 2001

Shri Yuvraj Janardhan Londhe .. Appellant

versus

State of Maharashtra .. Respondent

Mr.V.V.Purwant for Appellant

Mr.P.S.Hingorani, APP for State

CORAM : SMT.RANJANA DESAI AND D.G.KARNIK, JJ

JUDGMENT RESERVED ON: 19th April, 2006

JUDGMENT DELIVERED ON: 27th April, 2006

ORAL JUDGMENT (Per D.G.Karnik, J)

1. The appellant has been convicted under section 302 of the Indian Penal Code for murder of Kamlakar Sonawane and sentenced to suffer imprisonment for life and also to pay fine of Rs.10,000/- and in default to suffer further imprisonment of 6 months. That judgment and order dated 31st March, 2001 passed by the IInd

Additional Sessions Judge, Solapur, is impugned in this appeal.

2. In the city of Solapur the birth anniversary of Dr.Babasaheb Ambedkar is celebrated for a period of 10 days from 14th April every year. On 23rd April, 2000 a procession was taken out of the image of Dr.Babasaheb Ambedkar to celebrate his birth anniversary. Kamlakar Sonawane (hereinafter referred to as the deceased), the appellant Yuvraj Londhe (hereinafter referred to as the accused) his younger brothers Kamlakar and Manoj. Bablu Gaikwad (PW 8) and many others had also participated in the procession. When the procession reached near Ambika Tea House the deceased Kamlakar asked Manoj Londhe to give him water. Manoj refused and stated "..... ....." (I am not going to give). Being hurt by the refusal of Manoj who was younger to him, the accused slapped him. A quarrel that ensued was quitened by Bablu Gaikwad (PW 8) and few others present in the procession. In the night of 23rd April, 2000 itself, while Kamlakar was sleeping on the kutta (platform) of Buddha vihar situated at Ramji chowk, the accused and his another brother Kamalakar and father Janadardan allegedly attacked and killed the deceased

Kamalakar. The house of Muktabai Bansode (PW 3) is near the kutta at a distance of 20 to 25 feet. The house of Nagbhushan Bansode (PW 4) is also nearby. Other houses also surround the buddha vihar. In the night between 23rd and 24th April, 2000 Muktabai (PW 3) along with Bhama was sitting in the courtyard of her house alongwith Manoj and waiting for their family members to return from the procession. Nagbhushan Bansode (PW 4) was sleeping in the courtyard of his house. Muktabai saw the deceased Kamlakar going to the kutta and sleeping there. At about 1.30 a.m. on 24th April, 2000 Muktabai (PW 3) saw the accused followed by his brother Kamlakar and father Janardhan going to the kutta from the backside lane of the buddha vihar temple. The accused was carrying a crow-bar and his brother Kamlakar was carrying a stick. The accused climbed on the kutta and hit Kamlakar with the crow-bar on his head. His brother Kamlakar hit the deceased with the stick. Their father Janardhan was instigating the accused and his brother Kamlakar by saying "....." (Assault). Nagbhushan Bansode (PW 4) woke up due to the sound and saw the accused hitting the deceased who was sleeping on the kutta in front of buddha vihar with a crow-bar. Nagbhushan thereupon shouted

"..... " (why are you assaulting ?) and he ran towards the direction of the kutta. Thereupon the accused left his crow-bar on the ground and ran towards his house followed by his brother Kamlakar who ran away carrying the stick. Janardhan, the father of the accused picked up the crowbar and also followed the accused and his brother. Nagbhushan Bansode saw the deceased who had bleeding injury and was lying unconscious. Other persons from the locality including Bablu Gaikwad (PW 8) and Vasant Sonawane (PW 6) the uncle of the deceased came to the spot. The deceased was then put in an autorickshaw and was taken to the civil hospital, where he was declared dead on arrival. Vasant Sonawane, uncle of the deceased (PW 6) lodged a report about the incident at Samarth out post of Jail Road police station. In the same night the police commenced the investigation and apprehended the accused at 6 a.m. The brother and the father of the accused were also apprehended and all of them were charged for the offence of murder punishable under section 302 read with section 34 of the Indian penal code.

3. Chandrakant Depe (PW 1) a surveyor from the office of the city survey was called to draw a map

of the spot of the incident. The map drawn by him was produced at Exhibit 16 and the map was proved by examining Chandrakant Depe as PW 1. In the cross-examination he admitted that the map was not drawn to scale. He however, denied the suggestion that there was no mercury lamp posts as shown in the map. The prosecution also examined Dharma Gaikwad (PW 2) who was a panch witness for the arrest panchanama as also the seizure of the clothes and the panchanama of the spot of offence. He has stated that the accused was arrested in his presence and the blood stained shirt and the pant of the accused were seized in his presence and sealed separately in different packets. His signature was also on the two packets respectively containing the shirt and the pant of the accused. He has also proved the spot panchanama from where the sample of the blood stained " furshi " (stone flooring) of the kutta was also taken. He has withstood the cross-examination.

4. In the morning of 24th April 2000 at about 9 to 9.15 a.m. the police searched the house of Janardhan Londhe, the father of the accused wherein he himself along with his sons was residing. The house was searched in presence of Sanjay Shivsaran

(PW 5) and Nagnath Gaikwad. In the search, the iron crow-bar with blood stains on it was found concealed behind an iron trunk kept near a sewing machine in the second room of the house. The police seized the crow-bar under a panchanama and signatures of the panchas were obtained. A copy of the panchanama was also given to Janardhan and his signature was also obtained. The panchanama was produced in the Court at Exhibit 18 and was proved by Sanjay Shivsharan (PW 5). In the cross-examination he stated that he could not state the distance between the blood stains from the two ends of the crow-bar. He also stated that he could not tell the size of the trunk behind which the crow-bar was concealed. He however, denied the suggestion that police had planted the crow-bar in the house of the accused. In our view, the testimony of the pancha Sanjay Shivsharan (PW 5) regarding the seizure of the blood stained crow-bar from the house of the deceased is not in any way shaken in the cross examination.

5. Photographs of the dead body of Kamlakar were taken in the civil hospital by Shantikumar Nagtilak (PW 7) at the instance of the police. He also took the photographs of the spot of the incident. He

also accompanied the police to the house of the accused and took the photographs of the crow-bar in presence of panchas. He produced the negatives and positive prints of the photographs which was marked as Exhibit 38 to 48. In the cross examination it was suggested to him that he did not personally develop the negatives which he admitted. However, nothing further was elucidated in his cross examination.

6. Bablu Gaikwad was examined as prosecution witness no.8. He has stated that as part of the celebration of the birth anniversary of Dr.Babasaheb Ambedkar a procession was taken out on 23rd April, 2000. He has further stated that the deceased Kamlakar Sonawane his brother Vasant as also the accused, his brother Kamlakar and father Janardhan, Chandrakant Sonawane and many others of the community had participated in the procession. He further narrated that when the procession came near Ambika tea house the deceased Kamlakar asked Manoj brother of the accused to give him water. Manoj refused. Being irked by the refusal the deceased Kamlakar gave a slap to Manoj who was the younger to him. Manoj started crying. His brother then narrated the incident to Yuvraj and Kamlakar.

Thereupon there was a quarrel between the deceased and the accused Yuvraj and his brother Kamlakar. Nagnath Sonkamble intervened in the quarrel and quitened them. When the procession reached Siddharth Krida Mandal, Kamlakar Londhe informed his father Janardhan about the slapping by the accused to Manoj. Thereupon, Janardhan starting asking where the deceased was. Again Nagnath intervened and quitened Janardhan. Thereafter Janardan left the procession alongwith his sons. While the procession was going on, Chandrakant Sonawane came running towards the procession and told Bablu Gaikwad (PW 8) that on the kutta the accused and his brother Kamlakar had assaulted the deceased with a crow-bar. Obviously, PW 8 Bablu Gaikwad is not an eye witness. However, Bablu Gaikwad (PW 8) has stated about the previous quarrel which had occassioned on account of the deceased slapping the brother of the accused. He has also narrated that the accused his brother and Janardhan had left the procession and were inquiring where the deceased was. Thus, he has proved the motive for the offence.

7. There are two eye witnesses to the crime. Muktabai was sitting in the courtyard of her house

which is about 20 to 25 feet from the kutta of buddha vihar. She was sitting alongwith Bhamabai and waiting for return of their family from the procession. She has stated in her deposition that at that time she saw the accused Yuvraj followed by his brother Kamlakar and father Janardhan going to the kutta from the backside lane of buddha vihar temple. The accused was carrying a crow-bar and Kamlakar was carrying a stick. The accused then hit Kamlakar with a crow-bar over his head. There was noice of a metal hitting furshi (stone floor). Because of the blow of the crow-bar over the head of the deceased sustained bleeding injury over his head. Yuvraj again hit Kamlakar with a crowbar. Janardhan, father of the accused was also present and instigating the accused and his brother. She has further stated that at that time Nagnath Bansode PW 4 came and asked Janardhan why they were commiting the act. Thereupon, the accused got down from the kutta, dropped the crow-bar and went away in the lane. His brother Kamlakar followed him with the stick. Janardhan, the father of the accused lifted the crow-bar which was dropped by the accused. She also identified the crow-bar by which the accused had used, when it was shown to her in the Court. She was extensively

cross-examined. A suggestion was made to her that there was a quarrel between her husband and the deceased Kamlakar which she denied. She has deposed before the Court that there was an electric mercury light burning towards the back side of buddha vihar. It was suggested to Muktabai that the deceased lived in the house in which his parents and other family members were residing. She however, denied that Kamlakar was not sleeping on the kutta on the fateful night. It is true that there is omission in her statement about the presence of mercury light in the statement made before the police. However, presence of mercury light post cannot be disputed because mercury lamp post is seen in the site map drawn on the very next day. Omission about mentioning of mercury lamp post in her deposition therefore is not of much significance. In any event, it was not suggested to her in the cross that on account of darkness in the night, she was not able to identify the accused. The accused and his parents are leaving in the same locality. They belong to the same community and knew each other. Therefore, in our view, there is no possibility of mistaken identity.

8. In our opinion, evidence of Muktabai Bansode

(PW 3), who is an eye witness is cogent and reliable and has not been shaken in the cross examination.

9. Evidence of Muktabai Bansode (PW 3) is corroborated by Nagbhushan Bansode (PW 4). It is true that Nagbhushan was sleeping when the accused and his brother and father came from the lane. It is also true that Nagbhushan has stated that he woke up because of that sound (possibly first blow was given with a crowbar which appears to have hit the furshi. Thereafter, he has stated he came to the spot and asked Janardhan who was standing near the accused as to why they were assaulting the deceased. He had clearly seen the accused with the crow-bar in his hand. His statement was recorded on the same night within hours of the inident in which he stated the names of the accused and there is no omission in that regard. We find the evidence of Nagbhushan Bansode (PW 4) to be cogent and reliable.

10. Dr.Jaikumar Chanchure who conducted the post mortem was examined as PW 10. He has proved the post mortem notes (Exhibit 55). The post mortem notes show that on the head of the deceased was a

cut and had lacerated wound extending from the mid parietal region (Rt) up to mid frontal region right 5 1/2 "x 1 " with active bleeding. There was abrassion on right elbow and mid auxillary of the chest was also broken. The medical evidence is thus consistent with the ocular evidence wherein the eye witnesses have deposed that the deceased was assaulted on the head with a crow-bar. The chemical analyser's report was produced at Exhibit 65. The chemical analyser's report shows presence of human blood of the blood group A on the crow-bar which was seized from the house of the accused. Similarly, a sample of tile piece (furshi) which was taken from the place of the offence also shows presence of human blood of blood group A. It is true that the blood group of the deceased was not conclusively established. However, presence of the blood of group A on the furshi on the scene of the offence, presence of the blood of the same group on the crow-bar which was recovered from the house of the accused is also a circumstance which tends to connect the accused with the crime. In any event, when the ocular evidence is clear, unambiguopus and trustworthy, corroboration of every detail is not necessary.

11. Along with the appellant his brother Kamlakar and father Janardhan were also tried. However, they have been acquitted by the learned Sessions Judge. No appeal has been filed against their acquittal.

12. For the reasons mentioned above, we are of the view that it is established beyond any reasonable doubt that the accused caused the murder of the deceased Kamlakar with a crow-bar. We see no reason to interfere in the finding of guilt reached and the sentence imposed by the learned Sessions Judge. The appeal is dismissed.

(SMT.RANJANA DESAI, J)

(D.G.KARNIK, J)

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